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14 IN THE UNITED STATES DISTRICT COURT
15 DISTRICT OF ARIZONA

16 Beatrice Miranda,
17 Petitioner,

18 vs.

19 Tracy Nielsen *et al.*,
20 Respondents.

No. CIV 09-08065-PCT-PGR (ECV)

**REPLY IN SUPPORT OF MOTION
FOR PRELIMINARY
INJUNCTION, LEAVE TO
CONDUCT DISCOVERY,
SERVICE OF AND ANSWER TO
AMENDED PETITION ON NEW
RESPONDENT, AND
EXPEDITION**

21 On July 29, 2009, Petitioner Beatrice Miranda moved for several forms of
22 relief. The responses to her motion confirm that most of the relief she requested
23 should be granted.

24 **I. Request for Injunction for Return to Coconino County Detention
25 Facility**

26 None of the Respondents has opposed Ms. Miranda's request for an
27 injunction directing her return to the Coconino County Detention Facility. Braatz
28 Resp. at 2 ("Respondent Braatz has no objection to [Ms. Miranda's] being
returned to CCDF."); Anchondo & Harney Joinder in Braatz Resp. at 1
("Respondents Anchondo and Harney take no position concerning whether [Ms.

1 Miranda] should be returned to the Coconino County Detention Facility.”).

2 (Respondent Tracy Nielsen did not file a response to the motion.) Moreover,

3 Respondent Kurt Braatz has frankly admitted that he kicked Ms. Miranda out of

4 the Coconino County facility, resulting in her transfer to a small facility with

5 virtually no programs located in the far northwestern corner of the State, because

6 he preferred not be bothered with her attempt to vindicate her federal statutory

7 rights. Braatz Resp. at 2 (identifying one of Cmdr. Braatz’s motivations as “a

8 desire to avoid litigation”); *see also id.* Ex. A (email from Cmdr. Braatz to

9 Respondent Anchondo complaining that having Ms. Miranda in the facility “takes

10 up our time and resources preparing a Motion and potential future appearances in

11 Federal Court”). Rather than permitting Ms. Miranda to be effectively punished

12 for vindicating her rights under 25 U.S.C. §§ 1302 and 1303, and in light of the

13 Respondent’s non-opposition, the Court should order Ms. Miranda returned to the

14 Coconino County Detention Facility.

17 **II. Request for Leave to Conduct Discovery**

18 Commander Braatz seeks to show that the discovery requested by Ms.

19 Miranda is unnecessary by disclosing four emails, together with an affidavit

20 identifying them as “the only communications between Mr. Anchando and myself

21 regarding the removal of inmate Beatrice Miranda from the Coconino County

22 Detention Facility.” Braatz Resp. Ex. A. But rather than showing that discovery

23 is unnecessary, the materials provided only emphasize the appropriateness of the

24 discovery that Ms. Miranda has requested.

25 Far from showing that Ms. Miranda’s relocation was innocuous, the

26 volunteered emails confirm that she was kicked out of the Coconino County

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1 facility precisely because she sought to vindicate her federal statutory right to
2 relief from an unlawful sentence. Braatz Resp. at 2 & Ex. A. And they show a
3 few other things of interest as well: The emails indicate that Mr. Anchondo sent
4 Ms. Miranda farther away from her lawyers and from the courthouse in which her
5 petition is pending in the face of Commander Braatz's suggestion that her move
6 could "improve her access to the Federal Public Defender." *Id.* Ex. A. They
7 suggest that Mr. Anchondo perceived a connection between the merits of Ms.
8 Miranda's claim and the question of whether she should be relocated. *Id.* ("This
9 issue questions the Tribal courts [*sic*] ability to sentence a person to more than
10 [*sic*] one year."). They show that Commander Braatz copied his initial email to
11 Mr. Anchondo to eleven Coconino County employees, none of whom were
12 apparently copied on subsequent exchanges. *Id.* And they terminate with a
13 direction from Mr. Anchondo to a BIA employee apparently under his supervision
14 named Richard Hutchinson, who presumably carried through on Commander
15 Braatz's request by means of undisclosed communications with other individuals
16 under Respondents' supervision. *Id.*

19 Because it is now clear that her eviction from the Coconino County facility
20 was triggered by her attempt to vindicate her federal statutory rights in this Court,
21 Ms. Miranda should be permitted to conduct the discovery outlined in her motion.
22 The handful of emails attached to Commander Braatz's response clearly does not
23 exhaust the material she seeks to discover. The emails themselves demonstrate
24 that at least twelve individuals other than Commander Braatz and Mr. Anchondo
25 were included in the pertinent communications, and one of them (Mr. Hutchinson)
26 was the person who evidently carried through on Commander Braatz's request.
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1 Ms. Miranda's proposed requests sought to discover all pertinent communications,
2 not only between Commander Braatz and Mr. Anchondo, but between *all* of the
3 Respondents (no communications involving Ms. Nielsen have been provided), as
4 well as all individuals acting under the Respondents' supervision or authority.
5 Motion at 6. In order to develop a complete picture of the circumstances of her
6 relocation, Ms. Miranda should be permitted to engage in this discovery.
7

8 **III. Answer by Respondent Harney – Service on Respondent Nielsen**

9 One form of relief that Ms. Miranda requested is no longer necessary. Ms.
10 Miranda requested that the Court order that new Respondent Chris Harney be
11 served with the Amended Petition and answer it within 20 days of service. It now
12 appears that Assistant United States Attorney John Tuchi is representing Mr.
13 Harney, as well as Mr. Anchondo – and Mr. Harney, by and through Mr. Tuchi,
14 has responded to the Amended Petition. *See* Respondents Anchondo's and
15 Harney's Answer to Amended Petition (Dkt. #25).
16

17 Another form of relief, however, is necessary: The docket does not indicate
18 that Respondent Tracy Nielsen has been served with the initial or Amended
19 Petitions, or that she has entered an appearance in this case, notwithstanding the
20 fact that the Court ordered her personally served by its Order entered on June 25,
21 2009 – close to two months ago. Dkt. #8 at 4. Ms. Miranda respectfully requests
22 that the Court issue a further order requiring that Ms. Nielsen be immediately
23 served with the Amended Petition, and take such actions as are necessary to ensure
24 that service on Ms. Nielsen is accomplished promptly.
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1 **IV. Request for Expedition**

2 Ms. Miranda respectfully reiterates her request that the Court's ruling on
3 this motion be expedited. In light of the length of her sentence, lack of expedition
4 raises the prospect that her right to relief from her unlawful sentence will be
5 extinguished by the passage of time.
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8 Respectfully submitted: August 18, 2009

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1 Copy of the foregoing transmitted by CM/ECF for filing and transmittal
2 to the following ECF registrant this 18th day of August, 2009, to:

3 CLERK'S OFFICE
4 United States District Court
5 Sandra Day O'Connor Courthouse
6 401 West Washington Street
7 Phoenix, Arizona 85003

8 JOHN R. LOPEZ, IV
9 Assistant United States Attorney
10 Two Renaissance Sq.,
11 40 N. Central Ave., Ste. 1200,
12 Phoenix, AZ 85004-4408

13 Copies delivered by First Class United States Mail this 18th day of August, 2009,
14 to:

15 KURT BRAATZ
16 Commander, Detention
17 Coconino County Detention Facility
18 951 E. Sawmill Rd.,
19 Flagstaff, Arizona 86001

20 CHRIS HARNEY
21 Main Officer
22 Truxton Cañon Correctional Facility
23 P.O. Box 69
24 Peach Springs, AZ 86434

25 TRACY NIELSEN
26 Interim Chief
27 Pascua Yaqui Tribe Department of Public Safety
28 4725 W. Calle Tetakusim
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BEATRICE MIRANDA
Petitioner

s/ Susan L. West